IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR.

JUDGMENT

S.B.Civil Writ Petition No.1066/1996

Jarnail Singh & Anr. vs. Board of Revenue & Ors.

Date : 26.9.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.Ramandeep Singh, for the petitioners.
Mr.RK Singhal, for the respondents.

- - - - -

BY THE COURT :

Heard learned counsel for the parties.

The applicant/respondent no.2 submitted an application for opening a new way through killa nos.5, 6, 15, 16 and 21 of square no.51 so as to reach his agriculture land of square no.60/90 of chak no.7NP. The report was called from Tehsildar by the Sub Divisional Officer, Raisinghnagar. The Tehsildar proposed the way from killa nos.5, 6, 15, 16 and 25 of murabba no.48 of chak no.7NP as well as from killa nos.5 and 6 of murabba no.17. Killa Nos.5 and 6 was government land.

Before the S.D.O., the petitioners were given notice and they opposed the opening of way by objecting that there is already way available to the respondent no.2/ applicant from murabba no.91/92 at killas no.21 to 25. One another person affected namely, Saro Devi also objected to the opening of way from murabba no.48. However, the S.D.O. Passed ex-parte order dated 5.12.1988 and ordered for opening of way in murabba no.48 at killa nos.5, 6, 15, 16 and 25 and in murabba no.17 at killa nos.5 and 6.

The S.D.O.'s order dated 5.12.1988 was challenged by the petitioners by preferring appeal before the Revenue Appellate Authority, Sri Ganganagar. Before the Appellate Authority, it was submitted that the applicant applied for opening of way from square no.51 whereas it has been opened from murabba no.48. It appears that the Appellate Authority was of the view that since the land is falling in colony area covered by the Rajathan Colonisation Act, 1954 (for short 'the Act of 1954'), therefore, the way can be opened as per Condition No.8 of the Rajathan Colonisation (General Colony) Conditions, 1955 (for short 'the Conditions of 1955'). The Appellate Authority was of the view that the square no.51 was wrongly mentioned and it was in fact square no.48. It appears that before the appellate authority, Mst. Saro Devi gave her consent for opening of the way which was ordered by the S.D.O., therefore,

the petitioners alone remained aggrieved against the order of the Revenue Appellate Authority dated 26.6.1990 by which the petitioners' appeal was dismissed.

The petitioners preferred appeal before the Board of Revenue wherein the petitioners submitted that since the land in question is khatedari land, therefore, the Act of 1954 has no application. For this, the Board of Revenue observed that the petitioners did not produce any copy of jamabandi to prove the land to be their khatedari land. On merits also, the Board of Revenue decided against the petitioners.

Hence, the petitioners have preferred this writ petition against the order of the Board of Revenue dated 13.11.1995 as well as the orders of the two authorities below.

Learned counsel for the petitioners submitted that the order passed by S.D.O. is wholly without jurisdiction in view of the fact that the land in question is not a land declared as a colony land under the Act of 1954. It is submitted that the Division Bench of this Court in the case of Prem Singh vs. State of Rajasthan reported in 1990(1) RLW 131 clearly held that when the order issued by the State Government specified the village in Tehsil Suratgarh does not contain a particular village, then the provisions of

the Act does not apply to the villages which have not been included in the order issued by the State Government. In that situation, the Division Bench of this Court held that the S.D.O. had no power to pass any order under the Condition No.8 of the Conditions of 1955.

Learned counsel for the petitioners further submitted that the respondent no.2/applicant applied for opening of way in murabba no.51 whereas the sanction was accorded for opening of way in murabba no.48. It is also submitted that the consent of any other land holder who is not even co-sharer in the land of the petitioners even if agreed for giving way from her land, even then, the petitioners' right cannot be affected because of that concession of any adjoining khatedar tenant of the land.

Learned counsel for the respondent no.2/applicant vehemently submitted that the question of jurisdiction was not raised before any of the court and not even raised in the writ petition, therefore, the petitioners cannot raise this ground during the course of arguments only. It is submitted that two courts below – Revenue Appellate Authority and Board of Revenue both specifically held that wrong mentioning of murabba no.51 in place of murabba no.48 was due to mistake, therefore, the objection of the petitioners that the

way was opened from the land which was not prayed for is factually wrong.

I considered the submissions of learned counsel for the parties and perused the facts of the case.

It appears that the applicant applied for opening of a particular way and for which report was called from the Tehsildar of the area who submitted his report and proposed the way form killa nos.5, 6, 15, 16 and 25 of murabba no.48 and killa nos.5 and 6 of murabba no.17. The petitioners remained ex-parte and, therefore, ex-parte order was passed. However, before the appellate authority, the petitioners appear to have raised the objection about the jurisdiction of S.D.O. and, therefore, the appellate authority has considered the objection and thereafter, reached to the conclusion that since the land is covered under the Act of 1954 and, therefore, the S.D.O. had jurisdiction to open the way under Condition no.8. This objection appears to have been raised by the petitioners but that appears to have been raised in somewhat different manner than alleging that there is a case of inherent lack of jurisdiction because the land is not a colony land. The petitioners instead stated that since the land in question is khatedari land, therefore, the Act of 1954 has no application.

It is admitted case by both learned counsels that khatedari rights are granted for agriculture land irrespective of the fact that the land is situated within the colony area or outside the colony area. In view of the above, it is clear that the objection might have not been raised in proper form about the jurisdiction of the S.D.O. in the matter of opening of way under the Act of 1954 or the Conditions of 1955, was raised before both the appellate authorities. The Board of Revenue also merely held that since no copy of jamabandi was produced, therefore, rejected the petitioners' objection. The petitioners' khatedari rights were never in question and the question was only that the authority who had sanctioned the way had jurisdiction or not. It should have been considered in the background of facts and by considering the relevant provisions of law. In view of the above reason, the issue whether the land in question is colony land or not, is a question about inherent jurisdiction of the authority who passed the order. Since the petitioners remained ex-parte and the objection about inherent lack of jurisdiction was raised before the two courts below, though not in proper form, but it is a question of inherent jurisdiction of the authority which is depending upon the fact whether the land is falling in colony area or not. Therefore, it will be appropriate to set aside all the impugned orders and remand the

matter to the same authority for deciding afresh.

In view of the above discussion, this writ petition is allowed, the orders dated 5.12.1988, 26.6.1990 and 13.11.1995 are set aside and the matter is remanded to the S.D.O., Raisinghnagar for deciding whether the land in question was falling in the colony area or not or it has come in the colony area so as to find out whether the S.D.O. had jurisdiction at that time or now acquired the jurisdiction after the land becoming colony land. In case, the land in question was not a colony land when the application was moved or when the order was passed by the S.D.O. but if subsequently, the land came in the colony area and is covered under the Act of 1954, then the S.D.O. may decide the matter afresh after giving opportunity of hearing to both the parties and after finding out whether it will be appropriate to open way as demanded by the applicant/respondent no.2 treating that mention of murabba no.51 was a mistake only and it was in fact murabba no.48. The S.D.O., Raisinghnagar may decide the matter afresh within three months from the date of receipt of this order and till then, the status quo shall be maintained.

(PRAKASH TATIA), J.

S.Phophaliya